IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7770 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVIN DHIRUBHAI GANDHI
Versus
RAMANLAL DWARKADAS GANDHI AND ANOTHER

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Appearance :
MR DHAVAL D VYAS for the Petitioner
MR BP MUNSHI for Respondent No.1
MR HD VASAVDA for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 02/05/2007

ORAL JUDGMENT

1. Petitioner – original defendant is before this Court, as he is aggrieved by order dated 02.03.2006 passed by the learned 6th Additional Senior Civil Judge, Navsari below application Exh.130 in

Special Civil Suit No.18 of 1998.

The learned Judge, relying upon the provisions of Section 73 of the Indian Evidence Act, 1872, passed an order and directed the defendant to give his specimen signature, six on each paper and six such papers, to be given.

In a suit of the year 1998, the controversy arose as to whether signatures on document Exhs.70 to 74 bear the signature of the defendant or not and for that, earlier, an application Exh.98 was filed, which was allowed by order dated 18.08.2004 and these documents Exhs.70 to 74 were referred to the handwriting expert. The Handwriting Expert by letter Exh.126 requested for the signatures of the defendant to make it convenient/possible his work of comparison. Taking that into consideration , the Court passed the order under challenge.

2. Mr.Vyas, learned advocate for the petitioner submitted that the Court could not have passed the order for enabling the Handwriting Expert to compare the signature of the defendant. He submitted that if the Court wanted to compare the signature of the defendant, the Court could have asked the defendant to sign and produce the signature before the Court.

3. The submissions of learned advocate Mr.Vyas are not found well placed. The learned advocate relied upon a decision of the Hon'ble the Apex Court in the matter of **STATE OF UTTAR**

PRADESH VS. RAM BABU MISRA, reported in AIR 1980 SUPREME COURT 791.

The decision of the Hon'ble the Apex Court does not help the learned advocate for the petitioner because Hon'ble the Apex Court has held that:

> "Though a direction by the Magistrate to the accused to give his specimen writing when the case is still under investigation would surely be in the interests of the administration of justice, the language of S.73 of the Evidence Act does not enable the Magistrate to give such a direction when the case is still under investigation."

What follows is important:

> "The section contemplates pendency of some proceedings before a Court. It does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court....."

In the present case, the Court had already ordered the Handwriting Expert to examine the signature on documents Exhs.70 to 74 and to facilitate the work of the Handwriting Expert, present order is passed.

4. In view of that, Court finds no substance in the present petition. Hence, it is dismissed. Rule is discharged with no order as to costs. Interim relief is vacated.

(RAVI R.TRIPATHI, J.)

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